civil

(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHATTISAGRH

Single Bench

MCC. No. 44 /2007

MISCELLANEOUS CIVIL CASE ARISING OUT OF ORDER DATED 31.1.2007 PASSED IN CIVIL REVISION PETITION No. 142/2004 BY HON'BLE JUSTICE SHRI DHIRENDRA MISHRA.

Bharat Aluminium Company Ltd. .. .. PETITIONER
Through its Company Secretary
& power of attorney holder. Balco Nager, Korba. C.G.

VERSUS

Kaiser Aluminium Tecnical Services Inc... .. RESPONDENT
6177 Sunol Boulevard Plesanton
California 945667769.

APPLICATION BY THE PETITIONER UNDER SECTION 151 OF THE CODE OF CIVIL PROCEDURE

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक MCC No. 44/07 **सन् 200**

(69)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

15.2.2007

Mr. Abhishek Sinha, Advocate for the petitioner.

Mr. Sanjay S Agarwal, Advocate for the respondent.

Heard.

The petitioner has filed this application for direction to the District Judge, Bilaspur to refund the sum of Rs.4,00,00,000/- deposited in cash and return the bank guarantee of Rs.2,00,00,000/- to the petitioner together with interest accrued thereon, as the same was deposited in pursuance of the order dated 2.9.2004 passed in Misc. Appeal No.889 of 2004 by the Division Bench of this Court.

Learned counsel for the petitioner submits that Misc. Appeals No.889 of 2004 & 890 of 2004 have been dismissed by the Division Bench of this Court on 10.8.2005 against which the petitioner has preferred a Special Leave Petition (SLP) before the Hon'ble Supreme Court and the same has been admitted for hearing. He further submits that on the application of the petitioner this Court vide order dated 10.8.2005 passed in Civil Revision No.142 of 2004 had issued directions to the effect that till this revision is disposed of the amounts kept in deposit with the learned District Judge, Bilaspur will not be paid to the respondent and the bank guarantees furnished in favour of the learned District Judge will not be encashed. He further submits that Civil Revision No.142 of 2004 was dismissed by this

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मामला क्रमांक ..... सन् 200

(65)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Court vide order dated 31.1.2007 with a finding that the civil revision is not maintainable. It is submitted that since Miscellaneous Appeals No. 889 of 2004 & 890 of 2004 as also Civil Revision No.142 of 2004 have been dismissed by this Court only on the ground of maintainability and not on merit and since the Special Leave Petition (SLP) preferred by the petitioner against the dismissal of Misc. Appeals is already admitted for final hearing, the order dated 10.8.2005 passed in Civil Revision No.142 of 2004 be modified in terms of prayer made in this application. It is further contended that the respondent is a foreign company incorporated under the appropriate laws of the United States and on enquiries the petitioner has learnt that the respondent company is an insolvent company and proceedings have commenced against the respondent company in the bankruptcy Court of the United States. The said bankruptcy proceedings have been completed and pursuant to re-organization the respondent company ceased to exist.

I have heard learned counsel for the petitioner.

Perusal of order dated 10.8.2005 passed in Civil Revision No. 142 of 2004 reveals that the Division Bench of this Court after considering the arguments advanced on behalf of the petitioner directed that "till this civil revision is disposed of the amounts kept in deposit with the learned District Judge, Bilaspur will not be paid to

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(4)

मामला क्रमांक ..... सन् 200

(66)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the respondent and the bank guarantees furnished in favour of the learned District Judge will not be encashed". From the instant application also it reveals that the amount was deposited before the District Judge, Bilaspur in pursuance of the order dated 2.9.2004 passed in M.A. No.889 of 2004. The miscellaneous appeals were dismissed by this Court on 10.8.2005 against which the petitioner has already preferred a Special Leave Petition (SLP) and the same is pending adjudication before the Hon'ble Supreme Court.

Therefore, in view of the order dated 10.8.2005 passed by Division Bench of this Court in Civil Revision No.142/04, this Court is of the considered opinion that any further direction by way of modification of the order dated 10.8.2005 is neither expedient nor desirable.

In the result, the petition is disposed of with the aforesaid observations.

Consequently, M.W.P. No.221/07 & I.A. Nos.341/07 & 342/07 are also stand disposed of.

Sd/-
Dhirendra Mishra
Judge

Roshan/-

22-2-08

P.T.O.